

January 14, 2023

Via ECF

The Honorable Analisa Torres
The Honorable Robert W. Lehrburger
United States District Court for the
Southern District of New York,
500 Pearl Street,
New York, New York 10007

Re: *Chen-Oster, et al. v. Goldman, Sachs & Co., et ano.*,
No. 10 Civ. 6950 (AT) (RWL) (S.D.N.Y.)

Dear Judge Torres and Judge Lehrburger:

Pursuant to the Court's October 11, 2022 Order ("Order") setting pretrial deadlines, the parties shall submit all required pretrial filings by February 1, 2023. ECF 1380. The parties write jointly: (i) to seek the Court's partial amendment to the Order regarding timing for oppositions to motions in limine and pretrial memoranda of law and objections to jury charges and voir dire questions, and witness affidavits, and (ii) to seek the Court's guidance on the length of motions in limine and pretrial memoranda of law, reply briefs, and supplemental witness and exhibit lists.

1. Timing for Oppositions and Objections and the Parties' Positions on Reply Briefs

The Court's Order provides one week for the parties to submit oppositions to motions in limine. Pursuant to Your Honor's Individual Practices, this deadline also applies to oppositions to pretrial memoranda of law and objections to jury charges and proposed voir dire questions. The parties agree that given the scope of this trial and number of issues that will be addressed in these pretrial filings, one week is an insufficient amount of time to provide the Court with thorough and fulsome oppositions and objections. The parties agree that three weeks (February 22, 2023) would be an appropriate deadline, and respectfully request that the Court amend its Order. This will not affect any other case deadlines.

The parties disagree as to whether the schedule should allow for replies in support of the motions in limine. Their respective positions are as follows:

Plaintiffs' position: The parties can fully lay out their positions in moving briefs and responses. There is no need for additional briefing, which is contrary to the Court's standard practice, creates unnecessary work for the parties and the Court, and has the potential to delay resolution of disputes. *Cf.* Fed. R. Civ. P. 1. Should the Court permit replies, they should be limited to no more than five pages.

Goldman Sachs's position: The contours of this Phase 1 trial remain undefined. Given the infrequency with which this type of case proceeds to trial; the complex and overlapping questions of proof presented by Plaintiffs' disparate impact and disparate treatment claims under both Title VII and the NYCHRL; and the novel nature of Plaintiffs' disparate treatment claim, the parties are unable to agree on key evidentiary and legal issues and will be laying out their respective positions in their motions *in limine* and memoranda of law. Goldman Sachs believes that replies in support of motions in limine and memoranda of law (no more than half the length of the opposition memoranda) would assist the Court in resolving threshold issues involving nuanced legal questions that bear critically on the nature and scope of the Phase 1 proceedings. Goldman Sachs proposes a one-week deadline for the submission of replies.

2. Witness Affidavits

Pursuant to Your Honor's Individual Practices, § V.E.ii.a., in non-jury cases the parties must submit to the Court witness affidavits. The parties agree that because certain of Plaintiffs' claims will be tried to a jury, and witnesses will be testifying live at trial, witness affidavits are unnecessary here. The parties therefore respectfully request that the Court amend its Order to reflect that witness affidavits are not required here.

3. Length of Motions

The parties agree that each party should be given a total page limit of 90 pages to be allocated among motions in limine and memoranda of law, as each party sees fit. The same limit shall apply to opposition briefs.

4. Supplemental Submissions

The parties are in agreement that resolution of the motions *in limine* and any orders that the Court makes in response to issues raised in the parties' pretrial memoranda of law will provide much needed clarity concerning the nature and scope of Phase I. In addition, the parties have previously stipulated that each side may depose any person listed on the other party's witness list that has not been previously deposed in this matter. ECF 859. Accordingly, they agree that each side should be permitted to supplement its list of trial witnesses, exhibit lists, and deposition designations up to two weeks after the Court has ruled on the parties' motions *in limine* and the parties have completed such depositions, if any; provided, however, that the supplemental lists shall be filed no later than three weeks before trial. The parties further agree that the ability to file such supplemental lists does not relieve their obligation to make a good faith effort to identify their exhibits, witnesses, and deposition designations for the February 1, 2023 deadline.

Respectfully submitted,

/s/ Anne B. Shaver

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